

**REMARKS**

The remainder of this Amendment is set forth under appropriate subheadings for the convenience of the Examiner.

**Amendments to the Claims**

Claim 1 has been amended to recite that the spreadable food product is pre-loaded within the housing of the container such that the container is a one-time use dispenser. Support for this amendment can be found at least in Claim 7, as originally filed, and in the specification, for example, on page 5, lines 14-25. Claim 10 has been amended to recite the step of providing a filled container as a one-time use dispenser dispensing the spreadable food product for consumption. Support for this amendment can be found in at least Claim 16, as originally filed, and in the specification, for example, on page 5, lines 14-25.

Claims 1 and 10 have been further amended to recite that a dispensing member is “non-removably” mounted in the housing of the container. Support for these amendments can be found in the specification as a whole and for example, on page 3, lines 12-18, on page 5, lines 3-5 and lines 14-25 and in FIG. 1 and 3. Although the term “non-removably” is not explicitly used in the specification, it is clear that Applicant was in possession of the claimed invention of Claim 1, as currently amended, as a whole at the time the application was filed. For example, page 5, lines 3-5 describes that dispensing member 12 includes rotary dial 8 and threaded rod 20 where threaded rod 20 is fixedly mounted to rotary dial 8. In addition, page 3, lines 15-18 describes that dispensing member 12 is supported by bottom end 18 of housing 10, and FIG. 1 and 3 show that dispensing member 12 is mounted in housing 10 clearly in a non-removable fashion. Additionally, the intrinsic feature of the dispensing member 12, being non-removable from housing 10, of the container of the invention can be induced from the discussion on page 5, lines 14-25 about one-time and multiple-use embodiments where a spreadable food product is “pre-loaded” or “refill[s]ed” as desired. With respect to adequate written description requirement, MPEP 2163 states (emphasis original):

An adequate written description of the invention may be shown by any description of sufficient, relevant, identifying characteristics so long as a person skilled in the art would recognize that the inventor has possession of the claimed invention. ... An applicant may show possession of an invention by disclosure of drawings or

structural chemical formulas that are sufficiently detailed to show that applicant was in possession of the claimed invention as a whole. See, e.g., *Vas-Cath*, 935 F.2d at 1565, 19 USPQ2d at 1118 (“drawings alone may provide a ‘written description’ of an invention as required by Sec. 112”); ...

To comply with the written description requirement of 35 U.S.C. 112, para. 1, ... , each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure. When an explicit limitation in a claim “is not present in the written description whose benefit is sought it must be shown that a person of ordinary skill would have understood, at the time the patent application was filed, that the description requires that limitation.” *Hyatt v. Boone*, 146 F.3d 1348, 1353, 47 USPQ2d 1128, 1131 (Fed. Cir. 1998).

No new matter has been introduced with these amendments. Acceptance is respectfully requested.

Rejection of Claims 1, 4-8, 10 and 14-17 under 35 U.S.C. § 102(b)

Claims 1, 4-8, 10 and 14-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schroeder.

As amended, independent Claim 1 is directed to a container for dispensing a spreadable food product, which is a *one-time use dispenser*. The container comprises a housing; a cover; a platform; and a dispensing member *non-removably mounted* in the housing, where *the spreadable food product is pre-loaded within the housing such that the container is a one-time use dispenser*. As amended, a method for dispensing a spreadable food product of independent Claim 10 comprises providing a container for dispensing a spreadable food product, which includes a housing; a cover; a platform; and a dispensing member non-removably mounted in the housing. As amended, the method of Claim 10 also comprises the step of providing a filled container as a one-time use dispenser dispensing the spreadable food product for consumption. With Applicant’s invention as currently claimed in independent Claims 1 and 10, an end user receives a preassembled container where a spreadable food product is pre-loaded and a dispensing member of the container cannot be removed from the container, and thus, once the pre-loaded spreadable food product is used up, the container is disposed (i.e., one-time use). Because in Applicant’s invention, the spreadable food product is *pre-loaded* within the container such that the container is a one-time use dispenser, *any form* of a spreadable food product can be used with the Applicant’s invention.

Schroder discloses a **reusable** butter dispenser, as described on Column 2, lines 44-50. In particular, as discussed on Column 2, lines 18-20 and lines 44-50, Schroeder's butter dispenser is **for multiple uses**, and is **not pre-loaded with a spreadable food product**. A user needs to load a pre-shaped spreadable food product, e.g., a traditional stick of butter, so that the butter dispenser can receive the stick of butter through sharp protruding end 32 of shaft member 30. Also, Schroeder's butter dispenser is to be **disassembled completely** once the dispenser is empty for cleaning purposes for a next use. For example, knurled knob 38 and shaft member 30 in the Schroeder's butter dispenser are completely removable from housing 10 (see FIG. 1-4 and column 2, lines 44-50).

There is, however, no disclosure or suggestion in Schroeder of a one-time use butter dispenser. In particular, there is **no** disclosure or suggestion in Schroeder of a container or a method, for dispensing a spreadable food product where the container comprises **a dispensing member non-removably mounted in the housing** of the container. There also is **no** disclosure or suggestion in Schroeder of a container for dispensing a spreadable food product **where the spreadable food product is pre-loaded in the container such that the container is a one-time use dispenser**. There also is no disclosure or suggestion in Schroeder of a method for dispensing a spreadable food product comprising filling the container with an amount of the spreadable food product, resulting in a filled container, and providing the filled container **as a one-time use dispenser** dispensing the spreadable food product for consumption.

Further, because Schroder discloses only a butter dispenser that is advantageously disassembled completely (as discussed on Column 1, lines 32-35 and on Column 2, lines 44-50), Applicant's one-time use container pre-loaded with a spreadable food product would not have been obvious to one of ordinary skill in the art, or one of ordinary skill in the art would not have been motivated to modify Schroeder's device to come up with the container of currently-amended Claim 1. As discussed on Column 1, lines 32-35, Schroeder teaches away from the one-time use dispenser that is pre-loaded with a spreadable food product, where a dispensing member is non-removably mounted in the dispenser.

Therefore, Applicant's invention of independent Claims 1 and 10, as amended, is novel and non-obvious over Schroeder. Claims 4-8 and Claims 14-17 depend from independent Claims 1 and 10, respectively. Therefore, the subject matter of these claims also is novel and non-obvious over Schroeder. Reconsideration and withdrawal of this rejection are respectfully requested.

Rejection of Claims 2, 3, 9 and 11-13 under 35 U.S.C. § 103(a)

Claims 2 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schroeder in view of Volpini. Claims 3, 9, 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schroeder in view of Merkle.

Claims 2, 3 and 9 and Claims 11-13 are dependent from independent Claims 1 and 10, respectively. Thus, these claims include all of the claim elements of Claims 1 and 10, as amended.

As discussed above, Schroeder does not teach a container or a method, for dispensing a spreadable food product, where the spreadable food product is pre-loaded in the container such that the container is a one-time use dispenser. Also, Schroeder does not teach a container that comprises a dispensing member non-removably mounted in the housing of the container. On the contrary, Schroeder teaches away from the one-time use dispenser that is pre-loaded with a spreadable food product, where a dispensing member is non-removably mounted in the dispenser.

A secondary reference, Volpini, discloses a corn buttering device. However, Volpini does not remedy the deficiencies of Schroeder in that there is no disclosure or suggestion in Volpini of a container or a method, for dispensing a spreadable food product, where the spreadable food product is pre-loaded in the container such that the container is a one-time use dispenser. Also, Volpini does not remedy the deficiencies of Schroeder in that there is no disclosure or suggestion in Volpini of a container that includes a dispensing member non-removably mounted in the housing of the container. In contrast to Applicant's invention, the corn buttering device of Volpini includes piston 18 and knob 20 that are completely removable from cylindrical body portion 10 (see Fig. 1-3).

Another secondary reference, Merkle, discloses a measuring and dispensing device that has a scoop being open at both ends and a plunger. However, as with Schroeder and Volpini, there is no disclosure or suggestion in Merkle of a container or a method, for dispensing a spreadable food product, where the spreadable food product is pre-loaded in the container such that the container is a one-time use dispenser. Also, as with Schroeder and Volpini, there is no disclosure or suggestion in Merkle of a container that includes a dispensing member non-removably mounted in the housing of the container. As illustrated in Fig. 1, in the device of Merkle, plunger 20 and finger tab means 21 are freely removable from scoop 11.

As discussed above, all of the devices disclosed in Schroeder, Volpini and Merkle are intended for multiple uses and contain removable, multiple components where the components need to be assembled prior to use for loading a spreadable food product, and after use, the

components are disassembled for cleaning purposes for a next use. None of these devices are a preassembled container where a dispensing member is non-removably mounted in the housing of the container, and within which a spreadable food product is pre-loaded such that the container is a one-time use dispenser, as currently claimed in independent Claims 1 and 10. As such, Applicant's invention of independent Claims 1 and 10, as currently amended, would not have been obvious to one of ordinary skill in the art using the teachings of Schroeder, Volpini and Merkle.

Therefore, the subject matter of Claims 2, 3, 9 and 11-13, which are dependent from currently-amended independent Claims 1 and 10, respectively, is not obvious in view of Schroeder, Volpini and Merkle, taken separately or in any combination. Reconsideration and withdrawal of the rejection are respectfully requested.

#### CONCLUSION

In view of the above amendments and remarks, it is believed that all pending claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By Mary Lou Wakimura  
Mary Lou Wakimura  
Registration No. 31,804  
Telephone: (978) 341-0036  
Facsimile: (978) 341-0136

Concord, MA 01742-9133

Dated: 1/14/85